

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Robert Walter O'Donnell,)	
)	
Petitioner,)	
)	Case No. 1:03-CV-828
vs.)	
)	
Warden Pat Hurley,)	
)	
Respondent.)	

Order Adopting Report and Recommendation

On February 12, 2006, United States Magistrate Judge Timothy S. Hogan issued a Report and Recommendation in this matter. The Magistrate Judge recommended that grounds one through four of Petitioner's petition for writ of habeas corpus be denied with prejudice and that ground five of Petitioner's amended petition for writ of habeas corpus be dismissed with prejudice as time-barred under 28 U.S.C. § 2244(d). Petitioner has filed objections to the Report and Recommendation, and the Court has considered *de novo* the portions of the Report and Recommendation to which Petitioner has specifically objected. See Fed. R. Civ. P. 72(b).

The Court finds no merit in any of Petitioner's objections. Accordingly, the objections are hereby **OVERRULED**, and the Report and Recommendation are hereby **ADOPTED in toto**. Grounds One through Four of Petitioner's petition for writ of habeas corpus are **DENIED** with prejudice. Ground Five of Petitioner's amended petition for

writ of habeas corpus is **DISMISSED** with prejudice as time-barred under 28 U.S.C. § 2244(d). A certificate of appealability shall not issue with respect to Grounds One and Two, which the Court concludes are waived and, thus, barred from review on procedural grounds, and to Ground Five, which is barred by the applicable statute of limitations. Under the standard enunciated in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000), “jurists of reason would not find it debatable whether this Court is correct in its procedural ruling.” In addition, a certificate of appealability shall not issue with respect to Grounds Three and Four of the petition, which this Court has addressed on their merits, because Petitioner has failed to make a substantial showing of the denial of a constitutional right based on those claims. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

The Court hereby **CERTIFIES**, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this Order would not be taken in good faith and, therefore, **DENIES** Petitioner leave to proceed *in forma pauperis* on appeal. See Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

This action is **CLOSED**.

IT IS SO ORDERED.

/s/
Sandra S. Beckwith, Chief Judge
United States District Court